of premature retirement is illegal, without jurisdiction and contrary to the provisions contained in the Punjab Civil Services (Premature Retirement) Rules, 1975."

(8) The learned Judge did not refer to the statutory rules under which the punishment of forfeiture of approved service was awarded to the petitioner in that case. He also did not give any reasons for coming to the conclusion that the forfeited approved service could not be counted towards qualifying service. He did not appreciate that the forfeiture of approved service is a major penalty under rule 16.1 (3) of the Police Rules. The terms "forfeit" in common parlance only implies penalty. After the penalty of forfeiture of approved service has been imposed, it is to be treated as deterimental to the interest of the delinquent. These observations of the learned Judge are in negation to the statutory rules. We accordingly overrule the judgment of the learned Single Judge in *Gurdial Singh case* (supra) to the extent to which the learned Judge has held that the forfeited approved service cannot be counted towards qualifying service.

(9) The disciplinary authority rightly counted the forfeited approved service for determing the qualifying service under Rule 3(1) (a) of the Rules. The petitioner has been given the pensionary benefits after counting the forfeited approved service for grant of pension. The compulsory retirement from service is not by way of punishment but it has been ordered in public interest on fulfilment of conditions mentioned in the rule.

(10) The learned counsel for the petitioner did not challenge the order of premature retirement on any other ground except the one dealt with supra. The order of premature retirement from service is upheld.

(11) For the reasons stated above, the writ petition fails and is dismissed, but with no order as to costs.

J.S.T.

Before Hon'ble Ashok Bhan, J.

EMPLOYEES' STATE INSURANCE CORPORATION,—*Petitioners.*

versus

JALANDHAR GYMKHANA CLUB,—*Respondent.*

Civil Revision No. 873 of 1990

27th February, 1992

Employees' State Insurance Act (34 of 1948) *S.* 1(5)—*Club*—*Whether a club would be covered under the provisions of the Employees' State Insurance Act.*

Ashok Bhan, J.

Held, that restaurant in a Club is very much a part of the cultural life of the establishment. I have no hesitation in holding that the respondent would be covered under the ESI Act in view of the authoritative pronouncements of various High Courts, a reference to which has been made in the foregoing paragraph with which I fully concur.

(Para 9)

Employees' State Insurance Act (34 of 1948) *S.* 1(5)—*Question to be decided is whether the kitchen in a Club can be called a factory under the Act—answer to, depends upon finding out whether any manufacturing process is being carried out—Factories Act S.* 2 *K*(1) *(vi)—Manufacturing process.*

Held, that the sole test to decide whether any premises is a factory under the Act, therefore, depends on the finding whether any manufacturing process is being carried on with the aid of power or is ordinarily so carried on in the premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months. Admittedly, the Club is having a kitchen from which place the catering services are rendered to its members. From this kitchen, drinks hot and cold and certain items of food are prepared which are served by it to its members or their guests. The question then arises as to whether any manufacturing process is being carried out in the kitchen. Sub clauses (i) and (vi) of Section 2(k) of the Factories Act defines manufacturing process, which has been reproduced in the earlier part of the judgment. A perusal of these two sub-clauses would make it clear that preparation of the items which are prepared in the kitchen and the preservation and storing of any articles in the cold storage would be a manufacturing process.

(Para 6)

Employees' State Insurance Act—S. 75(3)—*Civil Court has no jurisdiction to entertain any dispute between the Corporation/establishment covered under the Act and employee.*

Held, that a perusal of Section 75 would indicate that once a conclusion is reached that a particular establishment is covered under the Act then any dispute between the Corporation and the employer has to be decided by the E.S.I. Court under Section 75 (1) (g). Sub Clause (3) of Section 75 creates a bar upon the jurisdiction of the Civil Court to decide or deal with any question or dispute as mentioned in Section 75 (1) of the Act.

(Para 10)

Employees' State Insurance Act (34 of 1948)—*Legislature enacted for benefit of employees of factory establishment irrespective of fact whether it is a project making one or not.*

Held, that the legislature enacted this Act for the benefit of the employees of the factory or the establishment irrespective of the fact whether it has an object of profit making or no. The distinction

which is sought to be drawn between the establishments having the object of profit making and where there is no object of profit making in an establishment for making the present Act applicable is irrelevant and foreign to the objectives for the enactment of the Act.

(Para 10)

K. L. Kapur, Advocate, *for the Petitioner.*

Subhash Kapoor, Advocate, *for the Respondent.*

JUDGMENT

Ashok Bhan, J.

(1) Employees' State Insurance Corporation, defendant-petitioner (hereinafter referred to as the petitioner) issued notices to Jalandhar Gymkhana Club, Jalandhar, plaintiff-respondent (hereinafter referred to as the respondent) for submission of a return or making contribution towards Employees' State Insurance Fund (for short 'ESI fund'). Plaintiff-respondent filed the present suit alleging that it was a registered Society, registered under the Societies Registration Act. It was alleged that the Club was not an establishment which was covered under the Act and as such was not liable to file returns or make contributions towards ESI fund; that the notices issued to it were void and illegal. Suit was for permanent injunction restraining the petitioner from recovering the contribution.

(2) Petitioner contested the suit and took a preliminary objection that the jurisdiction of the Civil Court has been specifically barred under Sub-Section (3) of Section 75 of the Act and that all disputes between the parties have to be adjudicated by the ESI Court in terms of Section 75(1) and in particular under sub-clause (g) of Section 75(1). On the pleadings of the parties, following preliminary issue was framed :—

"Whether the Civil Court has jurisdiction to try the suit ? OPP."

(3) The trial Court after considering various arguments advanced before it came to the following conclusion :—

> "Therefore, per allegations of the plaint and keeping in view the stand of the defendants in the written statement that the defendants have neither challenged the name of the plaintiff's establishment as a club nor alleged that it is a profit earning-body therefore, the stand of the plaintiff can be determined only by the civil court and not by the

Employees' State Insurance Court. Therefore, civil court has jurisdiction to try the suit and the issue is decided in favour of plaintiff and against the defendants."

(4) The main reason which weighed with the trial Court while taking this view was that the Club a voluntary organisation working on no loss no profit basis, was neither a factory nor an establishment declared to be so under sub-clause (5) of Section 1 of the Act.

(5) I have heard the learned counsel for the parties at length and in my view the trial Court has clearly erred in holding that the Civil Court has the jurisdiction to decide the matter in dispute. The Employees' State Insurance Act, 1948 (hereinafter referred to as the Act) has been enacted to provide certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. The Act was made applicable in the first instance to all factories other than seasonal factories. Sub-clause (5) of Section 1 provides that the appropriate Government may in consultation with the Corporation or the State Government, as the case may be, after giving six months notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. By a subsequent notification issued under sub-clause (5) of Section 1 of the Act the ESI Act was extended to certain establishments, i.e. hotels, restaurants, shops, etc. etc. Certain contributions are required to be made by a factory or an establishment to which the Act has been extended under sub-section (5) of Section 1 of the Act which is utilised by the Corporation for the benefit of the employees and for other objects given in the reasons and objects clause of the enactment of the Act. Factory is defined in Section 2(12) of the Act as under :—

"2.(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed."

Manufacturing process has not been defined under the Act but it is provided in the Act that the expressions "manufacturing Process" and "Power" shall have the same meaning, respectively assigned to

them in the Factories Act. Manufacturing process is defined in Section 2(k) of the Factories Act as follows :—

"manufacturing process" means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or dispose; or

(ii) pumping oil, water, sewage or any other substance or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding ; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or

(vi) preserving or storing any article in cold storage 'Power means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency."

(6) The sole test to decide whether any premises is a factory under the Act, therefore, depends on the finding whether any manufacturing process is being carried on with the aid of power or is ordinarily so carried on in the premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months. Admittedly, the Club is having a kitchen from which place the catering services are rendered to its members. From this kitchen, drinks hot and cold and certain items of food are prepared which are served by it to its members or their guests. The question then arises as to whether any manufacturing process is being carried out in the kitchen. Sub-clauses (i) and (vi) of Section 2(k) of the Factories Act defines manufacturing process, which has been reproduced in the earlier part of the judgment. A perusal of these two sub-clauses would make it clear that preparation of the items which are prepared in the kitchen and the preservation and storing of any articles in the cold storage would be a manufacturing process. This view has been taken by various High Courts, a few of which are reproduced below :—

(7) The earliest case on the subject is that of Madras High Court in *E.S.I.* v. *Spencer and Company* (1), while dealing with the case of

(1) 1978 I.L.C. 1759.

a hotel run by Spencer and Company, that preparation of coffee, peeling of potatoes, making bread-toast, etc. in a hotel, involve 'manufacturing process' within the meaning of expression 'factory' as defined in Section 2(12) of the Act, held as under :—

> "It cannot be gainsaid that the preparation of food would be a manufacturing process, as envisaged by the Act. This is clear from the definition. Any process of cleaning raw materials for the preparation of food would be work incidental to or connected with the manufacturing process, namely, preparation of food, and it will be difficult to say that the work of cleaning or preparation of raw material as the first step before cooking food or of preparing it by other means to make it more delectable and palatable will not be a work connected with or incidental to the process of preparing food, which, as already indicated, would be a manufacturing process. Potatoes have to been peeled before the potatoes are used for the preparation of food. The peeling of potatoes will be a work incidental to or connected with the preparation of food. The persons engaged in that work would be employees who are also engaged in the preparation of food, can be taken into account for the purpose of deciding whether 20 or more persons, mentioned in S. 2(12) of the Act exist or not. What we have said above applies with greater force to persons who are using the Coffee boiler for preparing Coffee. Here there is a more intimate connection, and boiled water is used for preparing Coffee and it can not be said that boiling water is not part of the manufacturing process of preparing coffee. The same applies to the use of the electric toaster. It is well known that bread is often toasted before it is used and it is a form of adaptation of bread and will come within the meaning of manufacturing process. The definition is wide enough to take in any aspect of treating or adapting any article or substance with a view to its use. On a reading of the definition of 'manufacturing process' along with the definition of term 'employee', we find it difficult to accept the contention that the persons who are engaged in peeling potatoes or in preparing coffee or in toasting bread are not employees who are doing work incidental to or connected with the manufacturing process or preparing food in the kitchen. Admittedly, there are 20 persons in the kitchen and when the other persons who are engaged in the activities mentioned above are taken into account, the number exceeds 20 and, since manufacturing

process is carried on with the aid of power, the definition of the term 'factory' is attracted."

(8) The second case on the point is the decision of Bombay High Court in *Poona Industrial Hotel Limited* v. *I. C. Sarin* (2), where in Bombay High Court held that the kitchen attached to a hotel should be considered a factory for the purpose of E.S.I. Act. It was held as under :—

"That the preparation of the food in the kitchen of the hotel is done with the aid of power is admitted. Now the question is whether manufacturing process is employed in the preparation of the food. In our opinion, the preparation of the food necessarily implies making of the food which is article or substance as mentioned in the definition of the phrase 'manufacturing process'. Several other articles which go into the preparation of the food are altered or cleaned or otherwise treated or adopted before the ultimate items of food emerged in the kitchen. We do not see how this process for making food or for washing, cleaning, or otherwise treating or adopting raw materials with a view to prepare food, cannot be treated as manufacturing process as defined in Section 2(1) of the Factories Act."

Following these two decisions, the Karnataka High Court in *M/s East West Hotels Ltd.* v. *Regional Director, E.S.I.C.* (3), held as under :—

"We are, therefore, of the considered view that an establishment like a Hotel or a Restaurant satisfies the definition of a 'factory' for the purpose of E.S.I. Act, subject to other conditions being satisfied."

Kerala High Court in *Employees' State Insurance Corporation* v. *Keralar Kaumudi* (4) also took a similar view.

(9) Keeping in view the fact that restaurant in a Club is very much a part of the cultural life of the establishment I have no hesitation in holding that the respondent would be covered under the ESI Act in view of the authoritative pronouncements of various High Courts a reference to which has been made in the foregoing paragraph with which I fully concur.

(2) 1980 L.I.C. 106.
(3) 1986 (1) Labour Law Journal 172.
(4) 1987 Vol. 1 Indian Factories Journal, 90.

Section 75 of the Act reads as under :—

"75. Matters to be decided by Employees' Insurance Court—(1) If any question or dispute arises as to

(a) Whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by the principle employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under Section 55-A on a review of any payment of dependants' benefits, or,

(f) Omitted, or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to or which may be decided by the Employees' Insurance Court under this Act,

such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) ... ...

... ...

(2-A) ... ...

... ...

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided

by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court."

(10) A perusal of Section 75 would indicate that once a conclusion is reached that a particular establishment is covered under the Act then any dispute between the Corporation and the employer has to be decided by the E.S.I. Court under Section 75(1) (g). Subclause (3) of Section 75 creates a bar upon the jurisdiction of the Civil Court to decide or deal with any question or dispute as mentioned in Section 75 (1) of the Act. In view of these provisions, in my considered view, Civil Court will have no jurisdiction to decide the matter in dispute and all disputes between the Corporation and the plaintiff shall have to be decided by the E.S.I. Court. Learned Counsel for the respondent argued that the respondent is a voluntary organisation having no object to profit making and, therefore, it would not be covered under the E.S.I. Act. I do not find any substance in this submission because the legislature enacted this Act for the benefit of the employees of the factory or the establishment irrespective of the fact whether it has an object of profit making or no. The distinction which is sought to be drawn between the establishments having the object of profit making and where there is no object of profit making in an establishment for making the present Act applicable is irrelevant and foreign to the objectives for the enactment of the Act.

(11) For the foregoing reasons, the revision petition is accepted; order of the trial Court is set aside and it is held that the Civil Court shall have no jurisdiction to try the present suit and the parties should seek their remedy in the appropriate forum. No costs.

J.S.T.

Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.

M/S JINDAL STEEL CORPORATION,—*Petitioner.*

versus

EXCISE AND TAXATION OFFICER AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 6577 of 1993.

20th January, 1994.

Constitution of India, 1950—Arts. 226 and 227—Haryana General Sales Tax Rules, 1975—Rl. 69 proviso sub-rule (1)—Ex parte best judgment assessed by effecting substituted service on petitioner Whether justified—Held that service not valid—Required to be made on address communicated by the assessee if business had closed down.